

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

MICHAEL FOHT,

Plaintiff,

v.

Case No. 08-CV-136

VILLAGE OF KEWASKUM,
RICHARD L. KNOEBEL, and
ROBERT A. BUDDENHAGEN,

Defendant.

CONSENT JUDGMENT AND ORDER

Final Resolution of this matter and controversy has been settled by and between the parties, and accepted by the Court, as reflected herein.

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. On February 8, 2008, Michael Foht commenced this action against the Village of Kewaskum, Richard L. Knoebel, in his official capacity as Chief of Police of the Village of Kewaskum, and Robert A. Buddenhagen, individually and in his capacity as police officer. This is a civil rights action challenging the Village of Kewaskum's ordinance § 58-41 of the municipal code that bans various types of literature distribution in the Village of Kewaskum, Wisconsin.

2. Plaintiff, Michael Foht, seeks injunctive relief, declaratory relief, and damages, pursuant to 42 USC §§ 1983 and 1988, and he alleges that defendants' actions enforcing § 58-41 against him on April 25, 2007, deny him fundamental

rights and due process, free speech, equal protection, and free exercise of religion under the United States Constitution.

3. After commencing this action and in face of these allegations, the Village of Kewaskum took immediate steps to withdraw the Ordinance. On March 18, 2008, the Village of Kewaskum repealed Ordinance § 58-41. In addition, in March 2008, the Village Chief of Police and the Village Administrator advised law enforcement in the Village of Kewaskum that § 58-41 shall not be enforced henceforth against Mr. Foht or any person for any reason.

4. The parties have conferred and desire to resolve the aforementioned dispute without protracted litigation and to resolve Mr. Foht's claims without the necessity of a trial by entering into this Consent Order.

5. Mr. Foht agrees to release all defendants from all claims or actions arising out of the facts that are the subject of this lawsuit, and in exchange the defendants shall pay the plaintiff the amount of \$1.00 as nominal damages and pay plaintiff's attorney's fees and litigation costs in the amount of \$11,000 within 30 days of the date this Order is signed. Parties shall pay no other costs or fees to any party (other than that payment identified in Paragraph 5 of this order).

6. Under the circumstances of this case and in this case alone, this Court hereby declares that § 58-41 of the municipal code of the Village of Kewaskum was facially unconstitutional pursuant to Supreme Court and Seventh Circuit precedent. Therefore, this Court further declares that § 58-41 of the municipal code of the

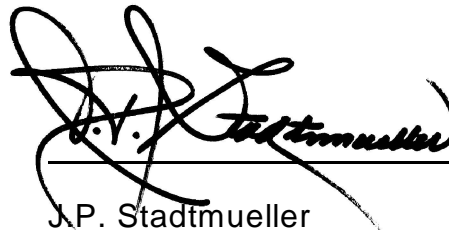
Village of Kewaskum should not have been applied to Mr. Foht's expressive activities on April 25, 2007.

7. This action be, and is hereby, **DISMISSED** without prejudice and without costs or fees to any party (other than that payment identified in Paragraph 5 above). The Court retains jurisdiction of this case solely to enforce the consent judgment, and the "without prejudice" language shall not allow them to reopen issues resolved by the judgment.

8. Judgment is entered in favor of plaintiff against defendants.

Dated at Milwaukee, Wisconsin, this 14th day of October, 2008.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J.P. Stadtmueller", is written over a horizontal line.

J.P. Stadtmueller
U.S. District Judge

Judgment entered this 14th day of October, 2008.

JON W. SANFILIPPO
Clerk of Court

By: s/ Nancy A. Monzingo
Deputy Clerk